

**MINUTES OF THE  
NEW MEXICO MINING COMMISSION MEETING  
SEPTEMBER 30, 1994**

The New Mexico Mining Commission meeting was convened at 9:15a.m., September 30, 1994 in Room 317 of the State Capitol Building. The following members were present:

Judith Espinosa	Chairwoman, Environment Department
Art Montana	Vice-Chair, Public Representative
Hal Whitacre	Public Representative
Dick McCleskey	Game and Fish Department
Val Green	Academic Representative
Ed Moreno	State Land Office
Bob McCaslin	Agricultural Experiment Station, Ex-Officio
Jeanie Cragin	Alternate
H.M. Conger	Alternate

**1. Roll Call**

Doug Bland from the Mining and Minerals Division took roll call.

**2. Approval of the Agenda**

Commissioner Hal Whitacre moved to approve the agenda. Mr. Montana seconded the motion, and the agenda was unanimously approved by all members present.

**3. Review of the Minutes of the July 11, 1994 Meeting**

Chairwoman Espinosa asked that the following corrections be made: Identifying Mr. Val Green as Academic Representative and Bob McCaslin as ex-officio; on 1st page item #3, 3rd paragraph, the dates should read 6/13 - 6/17 instead of 7/13 - 7/17.

Commissioner Montana's Proposed Addendum to the minutes of July 11, 1994 - (Item #4, Paragraph 5), meeting is as follows:

Commissioner Montana expressed concern that nothing is mentioned in the Regulations regarding parent-company guarantees. The Commission in its deliberations devoted considerable time to discussing this issue. They tacitly concluded that the Director should have the authority on a case-by-case basis to rule on the acceptability of parent-company guarantees, recognizing that the Mining Act does not state what forms of financial assurance are acceptable, although it expressly forbids "any type or variety of self-guarantee or self-insurance."(Section 69-36-7.Q.)

Chairwoman Espinosa said she needed clarification on Item #4, Paragraph 12. Clarification is as follows:

Mr. Brancard said that the argument that MMD made during the hearing is that A, it would be a waste of time for the agency to go through the process of permitting a facility where the operator may not have the authority to mine the property, and B, the agency's concern about the ability of MMD to have access to the property for inspections and reclamation if necessary.

Motion was made by Commissioner McCleskey to approve the July 11, 1994 minutes with changes, second by Commissioner Moreno. Motion passed unanimously.

**4. Update of the Mining Act Reclamation Bureau (MARB) activities including introduction of new staff members.**

Holland Shepherd, Bureau Chief of the Mining Act Reclamation Bureau talked about site assessments, the new bureau and introduced the staff members. Commissioners questioned Mr. Shepherd on the classification of mines as minimal impact based on the site assessments.

**5. Discussion and possible action on the Mining and Minerals Division petition for amendment of regulations.**

Mr. John Lingo talked about MMD's petition, and reasons for wanting to change the fee schedule. These reasons included problems with implementing the existing fee schedule and new information on increased costs.

There was considerable discussion between the Commission and Mr. Lingo regarding the contents of the petition. Members of the Commission questioned Mr. Lingo about estimated fee collections under the adopted fee schedule, estimated MMD budgets, the accuracy of MMD workload estimations, and additional information that may be obtained from permit applications.

Chairwoman Espinosa asked if the variable fees could be set near the cap for large and small mines because, in her estimation, even small mine applications would require large amounts of work for permit approval. This would be a way to increase fee collections under the adopted fee schedule.

The Commission asked for comments on the MMD petition from the audience. There was extended discussion regarding possible General Fund appropriations and Legislative changes to the Mining Act which may affect necessary changes in the fee schedule.

Chairwoman Espinosa asked for a motion on the Mining and Minerals Division petition for amendment of regulations. Motion made by Commissioner Moreno, second by Commissioner Cragin, to set a hearing on the MMD petition. The motion passed by a vote of four to two with Espinosa and Whitacre against.

**6. Discussion and possible action on the Environment Department cross-petition for amendment of regulations.**

Tracy Hughes of the Environment Department briefly discussed why the ED submitted the cross-petition, saying that it was ED's position that the Mining Act requires that all agencies with obligations under the Act should be funded through fees.

Carol Leach said that MMD's petition only addressed MMD's needs because MMD is not in a position to address the needs of other agencies, not because MMD believes that other agencies should not be funded from fees. She said MMD would modify the proposed fee schedule based on direction from the Mining Commission regarding the amount of fees to be generated by the fee schedule.

Bill Brancard offered to get an opinion from the Attorney General's Office on some of the legal issues in question, such as whether other agencies should be funded from fees.

Commissioner Conger moved to set a hearing on the cross-petition by the Environment Department, second by Commissioner Montana. Passed unanimously.

**7. Discussion and possible action regarding the petition for revision of guidelines for rulemaking including setting of hearing date.**

Mr. Lingo said that the purpose of MMD filing a petition on August 9, and supplement September 6th, was to amend the guidelines to allow for more flexibility in setting a hearing schedule.

Chairwoman Espinosa said she urges the Commission to remember the testimony that was heard by this Commission when they adopted the time frames in the guidelines.

Commissioner Moreno moved to table the petition for revision of guidelines, second by Commissioner McCleskey. Motion passed unanimously.

The Commission discussed when to hold the rulemaking hearing. Commissioner Whitacre moved that the hearing on the MMD and ED petitions be held starting on April 4th, second by Commissioner Conger. Motion passed unanimously. The hearing for the petition will begin on April 4, and will continue as long as necessary.

Discussion ensued regarding how best to balance the need for fees to support the Mining Act programs in the various agencies, and the difficulty of setting appropriate fees because of uncertainties discussed earlier. The Commission discussed postponing the collection of existing mine application fees until after the 1995 Legislative session when additional information would be available from MMD, the Attorney General's Office and the Legislature. Carol Leach verbally requested a stay of regulations pertaining to fee collection, but Bill Brancard said that a written request needed to be made.

The next Commission meeting was scheduled for October 25th in anticipation of the need to address a petition for a stay of regulations pertaining to fees.

#### **8. Litigation Report on Appeal of Regulations.**

Motion was made by Commissioner McCleskey to go into executive session to hear the litigation report by Bill Brancard. Second by Commissioner Moreno. Passed unanimously on a roll call vote.

The matters discussed in the closed session were limited to the items specified in the motion for closure.

Motion was made by Commissioner Cragin to go back into regular session. Second by Commissioner Green. Passed Unanimously.

There being no further business, Commissioner Conger motioned to adjourn, with second by Commissioner Green. The motion passed unanimously, and the meeting adjourned at 1:15pm.

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Chairwoman

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Date

Minutes by:

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Frances Garcia  
Mining and Minerals Division